

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Criminal Case No. 13-20184

D-2 Chavonne Simmons,

Honorable Sean F. Cox

Defendant.

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**ORDER GRANTING, IN PART,  
GOVERNMENT'S MOTION FOR RECONSIDERATION**

This matter is currently before the Court on the Government's motion seeking reconsideration of this Court's November 4, 2013 Opinion & Order Granting Defendant Chavonne Simmons's Motion to Dismiss Count II of the Second Superseding Indictment.

In its Motion for Reconsideration, the Government asks the Court to either: 1) reinstate the Second Superseding Indictment because it is not duplicitous; 2) reinstate the Second Superseding Indictment because a more appropriate remedy would be for the Court to give jury instructions particularizing the distinct offense charged in Count II; or 3) clarify that the dismissal of Count II of the Second Superseding Indictment was without prejudice.

In an Order issued on December 4, 2013, this Court denied the motion to the extent that: 1) the Court continues to conclude that Count II of the Second Superseding Indictment is impermissibly duplicitous; and 2) that the only viable remedy under the circumstances presented here is dismissal. The Court took the Government's remaining request (ie., that the Court clarify that the dismissal is without prejudice) under advisement and allowed Defendant to file a brief

setting forth her position as to that issue.

Having reviewed the parties' briefs, and the sparse authority on the issue, the Court concludes that the better approach is to dismiss Count II of the Second Superceding Indictment without prejudice. *See United States v. Tackett*, 2011 WL 4005347 (E.D. Ky. 2011); *United States v. Munoz-Franco*, 986 F.Supp. 70 (D. Puerto Rico 1997).

IT IS ORDERED that the Government's Motion for Reconsideration IS GRANTED IN PART. The Court grants the motion only to the extent that it CLARIFIES that the dismissal of Count II of the Second Superceding Indictment is WITHOUT PREJUDICE. As the Court has ordered the dismissal of Count II as duplicitious, without prejudice, proper pleading will require the government to re-structure any future indictment if such is submitted to the grand jury.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: December 30, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 30, 2013, by electronic and/or ordinary mail.

S/Jennifer McCoy

Case Manager